

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18602
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On January 7, 2005, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer), asserting additional individual income tax and interest in the amount of \$1,279 for tax year 2002.

The taxpayer filed a timely appeal and petition for redetermination. He did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

Idaho Code 63-3002 provides:

Declaration of intent. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

The intent of the Idaho Legislature is to follow the federal determination subject only to modifications contained in Idaho law. Pursuant to the authority of the Internal Revenue Code § 6103(d), the Tax Commission received a transcript of the taxpayer's 2002 federal income records. Because the amount of income reported to the Internal Revenue Service (IRS) for 2002 was more than the amount reported to Idaho, the Bureau sent the taxpayer a questionnaire to complete.

The questionnaire explained that each of the two returns reported a different amount of taxable income for the year. The taxpayer was given several choices to explain the difference. In

response, an accountant wrote a letter explaining the taxpayer lived in another state the last quarter of 2002.

The accountant said the taxpayer moved to another state in late September 2002. He said the taxpayer reported his nine months of Idaho income in his 2002 Idaho resident income tax return and reported the income earned in the new state of residency to the other state. He claimed the taxpayer was not a resident of Idaho at the end of 2002.

The records show the taxpayer filed Idaho resident income tax returns for the years 2000, 2001, 2002, and 2003 using the same Idaho address each and every year. On October 18, 2004, the Bureau sent another letter to the taxpayer asking for certain information in an effort to establish the taxpayer's state of residency for 2002. The Bureau asked the taxpayer to provide a copy of his 2002 federal return and a copy of the return he filed with the other state. Also, the taxpayer was asked to explain his employment outside of Idaho, the date he moved back to Idaho, and the steps he took to establish residency outside of Idaho.

Neither the taxpayer nor the accountant responded to the request for information, and an additional letter was sent followed by a NODD asserting Idaho income tax and interest for 2002. The taxpayer sent a "Petition for Reassessment." A fully executed Power of Attorney form was enclosed with the letter. After the Bureau sent a letter acknowledging the taxpayer's protest, the entire file was transferred to the Legal/Tax Policy Division for administrative review.

In response to a letter advising the taxpayer of his appeal rights, the accountant wrote a letter explaining the circumstances of the taxpayer's living in California. He included a copy of the front page of the taxpayer's 2002 [Redacted] resident income tax return. No dates or signatures could be seen in that one page of the return.

In the letter, the accountant explained the taxpayer is an equipment operator employed by

various well drilling operations. The taxpayer, known in the industry as a boomer, goes to wherever a big project offers work for him. From December through February, he is generally out of work, so he stays wherever he can find a free or low cost place to park his travel trailer.

The accountant explained the taxpayer's residency and domicile as follows:

- 1) Mr. [Redacted]'s home or "Domicile" is his @35 foot travel trailer and where he parks it-either on a job site or in a trailer park somewhere. The occasional "ranch or farm sitting" for an unpaid month or two would not seem controlling as it in [sic] inconsistent and never in the same place in later winters.
- 2) The 2002 move to California was for a job that lasted from April until October with a California Employer, and residency continued in Calif. until the spring of 2003.
- 3) Mr. [Redacted]'s domicile is wherever his @35 foot travel trailer is located. He has maintained a P.O. Box in [Redacted], Idaho, although I'm told he has never lived there. He does have an Aunt or Uncle in that area. He has had numerous other P.O. Boxes at times around the Western U.S., including in California in 2002.
- 4) Mr. [Redacted] lost his wife a number of years ago. He has relatives in Idaho, Utah, Nevada, and California including two daughters or stepdaughters, I'm not sure which. One was married with a child. The other's status I'm unsure of. The twin sister of the girls' mother was living in Colorado in 2002.
- 5) Mr. [Redacted] reportedly has not voted anywhere since before 2002.
- 6) Currently Mr. [Redacted] is reportedly working on a test drilling project near [Redacted], Utah. . . .

Idaho Code § 63-3013 in 2002 stated in pertinent part:

63-3013. Resident. -- (1) The term "resident," for income tax purposes, means any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or . . .

Domicile is defined in IDAPA 35.01.01.030 Idaho Administrative Income Tax Rules as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent.

Once a domicile of choice is established, it persists until another is legally acquired. In re Estate of Cooke, 96 Idaho 48, 59, 524 P2d 176 (1973). “The existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges the change.” Bodfish v. Gallman, 378 N.Y.S.2d 138, 141, 50 A.D.2d 457 (1976).

From the accountant’s statements on behalf of the taxpayer and Tax Commission records, it is clear the taxpayer established his domicile in Idaho during the years prior to 2002. Since the taxpayer’s domicile was Idaho prior to his move to [Redacted] (either in April or September of 2002), the presumption is the Idaho domicile continues until the taxpayer establishes a new domicile. The taxpayer did not show he established a new domicile when he left Idaho. Rather, he moved from place to place ending up back in Idaho where he maintained a permanent address and could contact the Idaho companies he usually worked for. He did not do the things one would expect of an individual if he was abandoning one place and acquiring another. Therefore, the Tax Commission found the taxpayer’s domicile remained in Idaho.

In 2002, Idaho Code § 63-3013(b)(2) provided a safe harbor exception for individuals that were absent from the State of Idaho for an extended period of time. This subsection stated that, if an individual was absent from the state for a period of 15 consecutive months and was not in Idaho for more than 60 days in a calendar year after the 15 month period, the individual, even though domiciled in Idaho, was not considered a resident and not required to file an Idaho income tax return.

In a letter dated October 10, 2004, the accountant stated the taxpayer moved to another state,

“in late Sept. of 2002,” and, in a letter dated May 9, 2005, the accountant said, “The 2002 move to [Redacted] was for a job that lasted from April until October . . .” Furthermore, the accountant stated in the May 9, 2005 letter, “With the exception of the 2002 California project, he has usually worked for Idaho companies and in or near Idaho.”

No evidence has been submitted that would suggest the taxpayer was out of the state of Idaho for 15 consecutive months during and after the period at issue. The taxpayer did not meet the safe harbor exception. As an Idaho resident domiciled in Idaho, the taxpayer was required to file an Idaho resident income tax return and report all income wherever earned to Idaho.

Idaho Code allows credit for income tax paid to another state while an individual is domiciled in Idaho. In the present case, the accountant submitted a copy of the front page of the taxpayer’s [Redacted] return. The return reported the income earned by the taxpayer while he was living and working in [Redacted] during 2002. The return shows the taxpayer’s exemption credits exceeded the tax responsibility taken from the tax table. No [Redacted] tax was paid. The taxpayer does not qualify for credit for taxes paid to another state for 2002.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertson’s, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

WHEREFORE, the Notice of Deficiency Determination dated January 7, 2005, is
APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest for 2002.

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,155	\$148	\$1,303

Interest is computed through July 15, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]	[Redacted]
[Redacted]	
[Redacted]	
